

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the)	CC Docket No. 98-115
Telecommunications Act of 1996)	
)	
Telecommunications Carriers' Use)	
Of Customer Proprietary Network)	
Information and Other)	
Customer Information)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions of the Telecommunications Act)	
Of 1996)	
)	
Provision of Directory Listing Information)	CC Docket No. 99-273
under the Telecommunications Act of 1934,)	
As Amended)	

**COMMENTS OF
LISTING SERVICES SOLUTIONS, INC.**

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For Listing Services Solutions, Inc.

Dated: October 13, 1999

SUMMARY

LSSi commends the Commission for its extensive work to ensure that directory assistance providers and directory publishers are able to offer innovative, competitive services consistent with the goals of the 1996 Act. With changing market dynamics, service innovation and expansion, and the revolutionary impact of the Internet upon service offerings, there remain critical questions regarding how competitors will be able to offer competitive directory assistance and publishing services in the next millenium. It is crucial that providers have access to the information that they need to offer their services, and have clarity and certainty about the regulatory schemes that govern this access.

This proceeding presents the Commission with a significant opportunity to provide regulatory clarity, while ensuring that competition will continue and flourish in the directory assistance and publishing markets. LSSi believes that the Commission, in rising to this challenge, should focus on three policy principles: (i) consistency with the pro-competitive goals of the Act and the Commission's previous determinations on nondiscriminatory access; (ii) the need for a national policy framework; and (iii) the importance of reaching policy decisions consistent with the rapidly changing innovations in the directory assistance and directory publishing markets.

LSSi believes that these policy goals require that the Commission reach several conclusions. *First*, the Commission should clarify that call completion services constitute either telephone exchange or telephone toll services, and that any directory assistance ("DA") provider that offers call completion services has a right of access to DA list information under Section 251(b)(3).

Second, the Commission should exercise its authority under Sections 201 and 202 to extend access to DA list information to DA providers that are not eligible under Section

251(b)(3) of the Act. The pro-competitive underpinnings of the Act as well as the realities of the DA market necessitate that third-party DA providers have access to LECs' DA databases. Third-party DA providers cannot offer accurate and quality DA services in competition with carriers if third-party providers cannot gain nondiscriminatory access to DA databases. Moreover, given that the telecommunications and information industries are increasingly relying on the DA services of third-party providers, it is crucial that the Commission ensure that this market need is met and that the quality of listings provided is as high as possible. Thus, the Commission should maximize the ability of third-party providers to access listings by allowing such access under the "just," "reasonable," and "nondiscriminatory" requirements of Sections 201 and 202 of the Act. As an alternative to this conclusion, the Commission could determine to allow DA database access by DA providers that are agents of telecommunications service providers entitled to access Section under 251(b)(3).

Third, the Commission should determine that the nondiscriminatory requirements of Section 251(b)(3) do not require carriers to provide access to listing information, such as national DA, that they have purchased from third-parties or other telecommunications carriers, and have not acquired in the course of their customer-carrier relationships. Such listing information is not subject to monopoly bottleneck control by LECs and is available for purchase in the marketplace.

Fourth, the Commission should allow DA providers to use DA list and subscriber list information for non-DA purposes. It is inconsistent with the nondiscriminatory requirements of the Act to allow LECs to use this information in anyway they choose, while limiting competing DA providers to finite uses. Moreover, the removal of use restrictions would allow for the development of creative and innovative information services, and would further allow providers

to maximize the economies of scale provided by using information for multiple types of offerings.

In addition, the Commission should not allow carriers to control DA providers' use of DA database listings and subscriber list information by manipulating pricing or consumer privacy concerns. The price of DA listings and subscriber list information should be based on cost, not upon the purpose for which the provider intends to use the information. Moreover, the Commission and the DA industry as a whole, and not individual LECs, should set any privacy policy that restricts the use of DA list and subscriber list information.

Finally, the Commission should determine that directory information providers can use either DA list information or subscriber listing information to provide Internet directory services. With respect to the use of subscriber list information, the Act makes plain that this information can be used to publish directories "*in any format*," which can include Internet protocols, as well as oral and written manifestations. With respect to DA list information, the Act is technologically neutral and does not prescribe limitations on the media in which DA information can be used, but rather anticipates and accommodates technological evolution. The nature of Internet offerings is not amenable to traditional distinctions of directory assistance services and directory publishing. In fact, the Internet makes these distinctions moot. Thus, the Commission should focus on allowing competitors access to the raw materials, *i.e.* the DA database listings and the subscriber list information, that they need to offer their services, and allow competitors to choose which offering more appropriately suits their services and to pay the costs associated with that information.

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On September 9, 1999, the Federal Communications Commission ("FCC" or "Commission") issued its *Notice of Proposed Rulemaking*¹ seeking comment on a variety of rules intended to enhance further competition in the directory assistance and publishing markets, by ensuring that competitors have fair, reasonable and nondiscriminatory access to the information that they need to offer these services, particularly as these services are evolving on the Internet. Listing Services Solutions, Inc., ("LSSi"), as a provider of national and international directory assistance ("DA"), call completion and branding services, has a

¹ *In the Matters of Implementation of the Telecommunications Act of 1996 et al.*, Notice of Proposed Rulemaking, CC Docket Nos. 96-115, 96-98, 99-273, FCC 99-227 (rel. Sept. 9, 1999) ("NPRM").

significant interest in the outcome of this proceeding. Accordingly, LSSi, by its attorneys, submits these comments in response to the Commission's *NRPM* in the above-captioned docket.

INTRODUCTION

In order to offer its services, LSSi has entered into numerous agreements to acquire DA databases (and the listing information contained therein) from incumbent LECs, and is properly certified in several state jurisdictions to provide its directory assistance and call completion services. While LSSi has achieved some success in accessing LECs DA databases, LSSi has not always enjoyed guaranteed access to listing information at prices and on terms that are consistent with the pro-competitive goals of the Telecommunications Act of 1996.²

It is crucial that LSSi have the ability to access DA list information on fair, reasonable and nondiscriminatory terms and thus, LSSi commends the Commission's decision to address these concerns in this proceeding. LSSi also believes that the Commission's focus on these DA-related matters is occurring at a critical juncture in the directory assistance and publishing markets as there are several fundamental industry changes underway that will shape directory assistance and directory publishing offerings, *e.g.* the dwindling relationship between telephone numbers and geography, increased demand for Internet-based offerings, and the industry's increased consolidation and move toward bundled services.

Thus, how the Commission implements rules regarding the directory assistance and publishing markets at the onset of this industry evolution will impact how competitors are able to adapt to these changes. To promote the development of meaningful competition in the directory assistance and publishing markets, LSSi recommends that the Commission determine the following:

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. §§ 151 *et seq.* ("1996 Act" or "Act").

- Call completion services constitute either telephone exchange or telephone toll services; any DA providers that offer call completion have a right of access to DA databases under 251(b)(3);
- The Commission should exercise its authority under Sections 201 and 202 of the 1996 Act to extend access to DA list information to DA providers that are not otherwise eligible under Section 251(b)(3) of the Act. As a viable alternative to this conclusion, the Commission should determine to allow DA access by DA providers that are agents of carriers entitled to access under Section 251(b)(3);
- The nondiscriminatory requirements of Section 251(b)(3) do not require carriers to provide access to listing information that they have not acquired in the course of their customer-carrier relationships, but instead have purchased from third-parties or other telecommunications carriers, such as national directory assistance (“NDA”) listings;
- The Commission should allow DA providers to use DA list and subscriber list information for non-DA purposes and should not allow carriers to restrict DA use by manipulating pricing or consumer privacy concerns;
 - The price of DA listings and subscriber list information should be based on cost and not on the purpose for which the information is used;
 - The Commission and not individual LECs should set privacy policy for any restrictions on the use of DA list and subscriber list information;
- Directory information providers can use either DA list information or subscriber listing information to provide Internet directory services.

BACKGROUND

The Commission’s *NPRM* is the latest step in its continued efforts to ensure competition in the markets for directory assistance and directory publishing. Until recently, there have been three sections of the Act that have provided competitors with access to directory assistance or directory publishing information— Section 251(b)(3), Section 251(c)(3) and Section 222(e). Now, with the Commission’s recent determination that directory assistance and operator services are no longer unbundled network elements that competitors can access under 251(c)(3),³ the sections that primarily govern access to directory assistance and directory publishing are Section

³ *In the Matter of the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order, CC Docket No. 96-98, FCC 99-238 (hereinafter *UNE Remand Decision*).

251(b)(3), which focuses on access of DA providers to DA databases, and Section 222(e), which focuses on access of directory publishers to subscriber list information. While the Commission has addressed extensively the rights of access under these provisions, there remain significant unanswered questions that that Commission must address in order to allow directory assistance providers and directory publishers to have the clarity and certainty that they need in order to compete effectively.

Section 251(b)(3) provides that *all* local exchange carriers must provide nondiscriminatory access to “directory assistance and directory listing” to providers of telephone exchange services and telephone toll services. Collectively, the Commission’s decisions in its *Local Competition Order*,⁴ *Second Report and Order*,⁵ and most recently, its *Second Order on Reconsideration*⁶ have interpreted Section 251(b)(3) to ensure open and nondiscriminatory access. Under these decisions, local exchange carriers (“LECs”) must provide access to directory assistance and directory listing in such a way that does not discriminate among requesting carriers in rates, terms and conditions of access, and that is equal in quality to the access that the local exchange carrier provides to itself.⁷ Moreover, the Commission has determined that LECs must provide DA databases in *any* “readily accessible electronic, magnetic tape, or other format specified.”⁸

With respect to several other issues, however, the Commission has not reached definitive conclusions: (i) whether DA providers that offer call-completion services are offering either

⁴ *In the Matter of the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, FCC 96-325, 11 FCC Rcd 15, 499 *et seq.* (rel. Aug. 8, 1996) (hereinafter *First Report and Order*).

⁵ *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, CC Docket No. 96-98, FCC 96-333, 11 FCC Rcd 19,392 *et seq.* (rel. Aug. 1996) (hereinafter *Second Report and Order*).

⁶ *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Order on Reconsideration, CC Docket No. 96-98, FCC 99-227 (rel. Sept. 9, 1999) (hereinafter *Second Order on Reconsideration*).

telephone exchange or telephone toll services, and thus entitled to access DA databases under 251(b)(3); (ii) whether DA providers that are not telephone exchange or toll service providers have a right of access to DA databases; (iii) whether DA providers accessing LECs' DA databases have the right to use those listings for non-DA services; and (iv) how DA list information should be priced.

To add to the uncertainty regarding the terms of Section 251(b)(3), the recent development of national directory assistance ("NDA") services has raised additional questions about the obligations of carriers to provide listing information. To date, the Commission's discussion of NDA has arisen in the context of US West's Petition for Declaratory Ruling⁹ asking the Commission to determine that US West's NDA service is an "incidental interLATA" service that it is permitted to offer prior to fulfilling the requirements of Sections 271 and 272.¹⁰ In order to offer this NDA service, US West provided DA information with respect to its own customers by accessing its own regional database, but to provide information on people and businesses that were not within its region, *i.e.* to provide nonlocal DA information, US West accessed databases operated by a third-party provider. In response, the Commission determined that NDA is an "incidental interLATA" service that US West is permitted to offer prior to Section 271 approval, and that US West does not have to make available under 251(b)(3) the "nonlocal" listings that they acquire from other LECs or third-parties in order to provide this

⁷ *Second Report and Order* ¶ 101.

⁸ *Second Order on Reconsideration* ¶ 153.

⁹ *In the Matter of Petition of US West Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance*, Petition for Declaratory Ruling, CC 97-112 (filed July 17, 1997).

¹⁰ Because the service allowed any US West customer in any US West state to obtain information about persons or businesses that were not in the US West region, there existed an underlying question as to whether or not this service is permissible under the Act's mandate that RBOCs may not offer long distance services that originate in their region before meeting the Section 271 requirements.

service.¹¹ However, by raising the matter again in its *NPRM*, the Commission has indicated that it has not settled the question of whether LECs have an obligation under 251(b)(3) to make available DA listing information that is not from their own customer databases (their local listings) but instead acquired through third-parties (nonlocal listings).

Not only are there unanswered questions regarding access to DA under 251(b)(3), there are also unresolved issues regarding access to, and use of, subscriber list information by directory publishers under Section 222(e). Section 222(e) provides that *all* telecommunications carriers that provide telephone exchange service must “provide subscriber list information . . . on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format.” The Commission has determined that carriers must provide this information on the same terms, rates and conditions that it provides to itself and that presumptively reasonable rates for subscriber list information would be \$0.04 per listing and \$0.06 per update.¹² However, the Commission has not yet resolved the scope of permissible services that directory publishers may provide using subscriber list information acquired under 222(e). The need to resolve this issue has become apparent with the changing nature of directory assistance and directory publishing industry.

To date, the Commission has maintained a clear distinction between the rights granted under Sections 222(e) and 251(b)(3) to directory publishers and directory assistance providers respectively because the Act addressed them distinctly in different provisions, but also

¹¹ *In the Matter of Petition of US West Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance, et al.*, Memorandum Opinion and Order, CC Docket Nos. 97-172 and 92-105, FCC 99-133 (rel. Sept. 27, 1999) (hereinafter *US West NDA Order*) ¶¶ 25, 33.

¹² *Third Report and Order* ¶¶ 58, 73, 106

importantly because the nature of the services were distinguishable from one another.¹³

Directory assistance has typically been the real-time or automated ability of customers to receive directory information without consulting a reference in paper form, and the information that the FCC has permitted DA providers to access has been LECs' DA databases, consisting of names, addresses, telephone numbers, as well as customer rating tables¹⁴ and features adjunct to the provision of DA.¹⁵ In contrast, directory publishing has traditionally been associated with white and yellow page and the information that the Commission has permitted publishers (and only directory publishers) to access to provide this service has been subscriber list information, consisting of names, addresses, telephone numbers and primary advertising classifications.¹⁶

However, as the Commission has recognized, there is a fundamental change in the way directory services are offered today, particularly via the Internet. As a result directory assistance is no longer clearly distinguishable from directory publishing.¹⁷ For example, some online offerings are similar to traditional yellow or white pages in that they allow users to browse the directory information themselves, and to download listing information to read or otherwise utilize just as a traditionally published directory. But at the same time, these offerings also have interactive qualities like traditional directory assistance in that they allow users to request specific information about particular persons or businesses. Moreover, the distinction between directory assistance and directory publishing has become increasingly blurred as the public is beginning to access a full scope of directory information through the Internet via handheld devices, including as mobile phones. In the case of this type of access, while an actual telephone

¹³ *NPRM* ¶ 170.

¹⁴ "Ratings tables are databases that cross-reference area codes, numbers called, and time of day to determine the price to be charged for telephone calls." *Second Report and Order* ¶105 n. 252.

¹⁵ *NPRM* ¶ 171.

¹⁶ *NPRM* ¶ 171.

¹⁷ *NRPM* ¶ 171.

may be used to access DA information, there is no telephone operator (in person or automated) as with traditional services. The Act does not explicitly address this evolving convergence.

Because of all of these uncertainties, the Commission has opened this proceeding to clarify further the scope of the nondiscriminatory access guaranteed by the Act in Sections 251(b)(3) and 222(e). In its *NPRM*, the Commission proposes to take several actions. First, the Commission continues its efforts to improve upon how directory assistance providers should access databases and specifically asks: (1) whether providers offering call completion services qualify as telephone exchange or telephone toll providers entitled to access DA databases under Section 251(b)(3);¹⁸ (2) whether Sections 201 and 202 allow DA access by DA providers that are not entitled to access under 251(b)(3);¹⁹ and (3) whether LECs, particularly incumbents, should have to provide access to the DA database listings that they have acquired from other providers for telephone subscribers outside of their local service area.²⁰

Recognizing that “technological advances have blurred this distinction” between directory assistance and directory publishing, the Commission further asks whether the subscriber listing information that has traditionally been used to provide directory publishing (and not directory assistance) can also be used to provide Internet directories.²¹ The Commission also asks whether or not directory information (both DA databases and subscriber list information) can be used for additional purposes that are not related to traditional directory assistance and directory publishing offerings.²² Finally, the Commission asks whether the multi-faceted use of directory information should impact the prices charged for access to that information. Specifically, the Commission asks whether DA databases and subscriber listing

¹⁸ *NPRM* ¶ 185

¹⁹ *NPRM* ¶¶ 183-190

²⁰ *NPRM* ¶¶ 193-195.

²¹ *NPRM* ¶¶ 171, 173.

information should be priced at the same level, and whether the manner in which the information is used should dictate price.²³

Below LSSi responds to these inquiries, and in doing so, proposes an analytical framework that the Commission should use as a guide in developing rules that will sustain and further enhance the innovation and competitive growth that has emerged in the directory assistance and directory publishing markets. First, the Commission should be guided primarily by the 1996 Act and its previous determinations on nondiscriminatory access. As a result of the Act's guarantees for access to directory information and the Commission's implementation of those guarantees, competition has become more robust in both the directory assistance and publishing industries. Thus, additional rules should further enhance, not detract from, the policy principles that have resulted in this competition.

Second, the Commission should seek to maintain a national framework that governs directory assistance and directory publishing. Increased consolidation of telecommunications companies into nationwide providers, the increased use of telephone numbers for a variety of services and the dilution of the relationship between geography and telephone numbers all necessitate national rules that govern the way in which DA list information and telephone subscriber information is shared and transmitted. Thus, while the Commission should allow leeway for pro-competitive state decisions, like that of the California Public Utilities Commission ("CPUC") allowing third-party DA providers access to listings,²⁴ the Commission should ensure that state actions remain consistent by providing a national framework.

²² *NPRM* ¶¶ 173-186.

²³ *NPRM* ¶¶ 176-181, 187-190.

²⁴ California Public Utilities Commission, *Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service et al.*, Case R. 95-04-043, Decision 97-01-042 (Jan. 23 1997) at pp.29-30.

Third, given the ever-changing nature of the directory information industry, the Commission should aim for a forward-looking approach in setting rules so that innovative transmission of directory information flourishes and is not prematurely inhibited. Accordingly, the Commission should avoid imposing arbitrary distinctions between service types where natural innovation and market tendencies are blurring those distinctions.

DISCUSSION

I. THE COMMISSION SHOULD DETERMINE THAT DA PROVIDERS OFFERING CALL COMPLETION SERVICES HAVE A RIGHT OF ACCESS TO DA DATABASES UNDER 251(B)(3).

The Commission has asked for comment on whether a “directory assistance provider becomes a provider of telephone exchange or telephone toll service,” and thus becomes entitled to nondiscriminatory access to DA databases under Section 251(b)(3), when that provider offers call completion services.²⁵ The Commission has asked this question in the context of its tentative conclusion that telephone exchange and toll service providers are the only “class of entities” that are the intended beneficiaries of the Section 251(b)(3) guarantees, thus making it crucial that all of the these entities included in this class are properly recognized as beneficiaries. The Commission also recognized that this question is particularly important because many DA providers, like LSSi, also offer call completion services.²⁶

As LSSi discusses below, the Commission should find that DA providers offering call completion services have a right of access to DA databases under Section 251(b)(3). The plain language of the Act makes clear that call completion services can be either telephone exchange services or telephone toll services. Moreover, the Act does not distinguish among providers of telephone exchange and telephone toll services based on type of services or manner of

²⁵ *NPRM* ¶ 185.

deployment. Thus, it is important for the Commission to clarify that qualifying providers are entitled to DA databases under 251(b)(3), regardless of whether they limit their services to DA and call completion, or whether they have chosen to complete these calls using a facilities-based or resale-based deployment strategy.

A. The Plain Meaning of the Act Indicates that Call Completion Can Constitute Either a Telephone Exchange Service or Telephone Toll Service Depending Upon Its Provisioning.

In evaluating whether call completion services are telephone exchange services or telephone toll services, the Commission should look to the plain statutory definitions of these services. When the nature of call completion services are evaluated under these definitions, it is clear that call completion constitutes either a telephone exchange service or a telephone toll service depending upon its provisioning. Call completion services occur where a directory assistance provider sends the telephone number found by the DA operator to a switch which then routes the call either directly or through a port to the desired destination.²⁷ Some DA providers may own the platform workstation or the switching facilities and others do not. For example, LSSi uses multiple approaches to serve its customers. In some instances, LSSi owns the workstations and switching facilities, and in some instances LSSi does not. The transmission of the call to the end-user can occur over the telephony customer's lines or over lines accessed by DA providers on a resale basis.

Telephone exchange services are defined as “service within a telephone exchange, or within a connected system of telephone exchanges within the same area operated to furnish to subscribers intercommuting service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge,” or “comparable service provided through

²⁶ *NPRM* ¶¶ 184-185.

a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.”²⁸ Based on this definition, call completion can be a telephone exchange service. Call completion to local customers is, at a minimum “comparable” if not equal to, “an intercommuting service of the character ordinarily furnished by a single exchange” as described by the Act in that it allows a local caller at his or her request to connect to another local telephone subscriber, and in that process the DA provider originates the call to the intended location. Moreover, this service is provided through “a system of switches, transmission equipment, or other facilities,” namely the workstation and switching facilities that route calls from the DA platform to the caller’s intended destination.

In some instances, call completion constitutes telephone toll services. Telephone toll services are defined as a “telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.”²⁹ A DA provider offers this type of service when the provider connects a call from a caller in one exchange to the requested destination in another exchange area. Thus, call completion meets either the statutory definition of telephone exchange services or telephone toll service depending upon the nature of the call.

B. Section 251(b)(3) Does Not Exclude DA Providers That Offer Call Completion as Their Only Telephony Service Nor Does It Discriminate Between Providers That Are Facilities-Based and Resale.

The Act does not permit discrimination among providers of telephone exchange and telephone toll services. The purpose of the Act is to give competitors the tools that they need to

²⁷ Whether the call is routed directly by the switch or through a port depends on the sophistication of the switch.

²⁸ 47 U.S.C. § 153(47).

²⁹ 47 U.S.C. ¶ 153(48).

offer a variety of competitive telecommunications services. The Act never prescribes exactly what those telephony services should look like, but rather leaves that determination to competitors and market forces. The directory assistance market is dynamic and innovative as providers seek to utilize various media and transmittal services to provide directory information and other services supported by directory information. For instance, DA providers are now packaging their services with information about movie listings, locations and types of restaurants, and then completing calls to those destinations. The evolution of these services has clearly demonstrated that there is a market niche for telecommunications providers that only offer DA and call completion services.

To encourage innovation in the DA market, the Commission must ensure that these providers have nondiscriminatory access to DA databases. A Commission decision that providers of call completion are not providers of telephone exchange service or telephone toll service would stymie innovation in the emerging DA market. Moreover, such a ruling would mean that DA providers can only be true providers of telephone services if they offer the same service offerings as traditional LEC providers, and in effect, would force DA providers to provide additional telephone services offerings in order to access DA listings. Such a result would undermine the benefit, which the market has already recognized, of third-party providers that deliver expert quality DA and call completion services by focusing their efforts on this market. Standing alone, an offering of directory assistance and call completion services is a valid, beneficial and increasingly dynamic service, and the call completion portion of those services constitute telephone exchange service or telephone toll service. Thus, the Commission should determine that providers of these services have a right of access to listings under Section 251(b)(3).

The Commission should also clarify that regardless of whether call completion providers are facilities-based or resale-based, they have an absolute right of access to DA databases. Some states have attempted to limit DA and call completion provisioning only to facilities-based providers. LSSi believes that such a limitation is unnecessary and anticompetitive. Regardless of the nature of their underlying services, carriers that offer quality DA and call completion services enhance the DA marketplace, and thus the Commission should establish as a national rule that providers of DA and call completion, regardless of whether they are facilities-based or resale-based, have a right of access to DA databases under Section 251(b)(3).

II. THE COMMISSION SHOULD MAXIMIZE THE ACCESS THAT DA PROVIDERS HAVE TO DIRECTORY ASSISTANCE DATABASES.

While competition has been emerging in the DA market, regulatory and market changes necessitate that the Commission take steps to maximize the access that DA providers have to DA databases. Until recently, two sections of the Act have allowed DA providers access to directory assistance databases—Section 251(b)(3), which provides DA access to all providers of telephone exchange services, and telephone toll services, and Section 251(c)(3), which provides all telecommunications carriers with access to unbundled network elements, which until recently included access to DA databases. Because Section 251(c)(3) no longer provides access to DA databases as an unbundled network element, there is no longer a guarantee of access to DA at rates based on TELRIC. The result is that there are less pro-competitive guarantees to ensure that DA competitors have the access that they need to offer their services.

Moreover, there are market changes that necessitate Commission action. The depletion of numbering resources have pressed state commissions to implement solutions that have decreased the relationship between phone numbers and geography, and thus there is increased

consumer reliance on directory services and a related increased need for providers that exclusively focus on these services. Similarly, the need for third-party DA providers is further increased by the consolidation of carriers representing different geographic regions and offering different types of services. In addition, incumbent LECs have increasingly looked to third-party DA providers to provide effective and quality directory assistance services. For all of these reasons, it is important that the Commission maximize the access of all DA providers to DA databases, and indeed the Commission is considering several rules that would have this effect.

In its *NPRM*, the Commission considers steps that would maintain and increase competition in the directory assistance market. Specifically, the Commission has asked whether or not to extend the right of nondiscriminatory access to DA databases to DA providers that are agents of LECs or other carrier entitled to access listings under Section 251(b)(3), and if so, whether such LEC agents should be limited to providing DA to the customers of the carrier with which it is affiliated.³⁰ In a more expansive proposal, the Commission has asked whether it should allow access to DA providers that neither offer telephone exchange services or telephone toll services,³¹ and whether such access is required by the prohibitions in 201(b) and 202(a) against “unjust and unreasonable” treatment or discrimination in charges, practices, classifications, or regulations, in connection with communication services.³²

In its consideration of these questions, the Commission has recognized the important role of third-party providers in the DA market, and has tentatively concluded that third-party providers cannot compete in the directory assistance market without access to DA databases that is at least equal in quality to that enjoyed by providers of telephone exchange services and telephone toll services, and accordingly, these third-party DA providers should have access to

³⁰ *NPRM* ¶¶ 184-185.

³¹ *NPRM* ¶ 183.

DA listings.³² The Commission further tentatively concluded that, because Section 251(b)(3) expressly limits its guarantees to providers of telephone exchange services or telephone toll services, the Commission would need to rely on an alternate provision in the Act to allow access to other DA providers. The Commission further tentatively determined that Sections 201(b) and 202(a) provided the Commission with such alternate authority. Specifically, the Commission determined that these statutes provide the FCC with the authority to ensure just, reasonable and nondiscriminatory charges, practices, classifications and regulations, and are a sufficient basis upon which to require LECs to provide third-party DA providers with access to DA databases.

LSSi believes that the Commission can maximize access to DA databases by adopting its tentative conclusions. The Commission has authority to allow third-party providers access to DA databases under Sections 201 and 202 and under the Congressional mandate to foster competition and encourage lower prices and higher quality service in telecommunications services, of which DA is a significant part. In addition, the Commission is correct in its tentative conclusions that there is a sufficient market need to extend the right of access to DA listings to providers that do not offer telephone exchange services or telephone toll services.

A. The Commission Should Exercise Its Authority to Allow Third-Party Providers to Access DA Databases Under the Act.

As indicated earlier, the Commission has asked whether or not it should allow third-party DA providers to access LECs' listings under Sections 201 and 202. LSSi believes these sections plainly provide the Commission with a mandate to address discriminatory conduct throughout the telecommunications and related industries, including directory assistance, that is distinct from Section 251(b)(3). LSSi believes that the Commission should exercise this authority to

³² *NPRM* ¶ 190.

³³ *NPRM* ¶ 190.

mandate that LECs must allow third-party providers of DA access to directory listings. This would promote both competition and innovation in the DA market.

Sections 201 and 202 provide the Commission the authority to address unjust, unreasonable and nondiscriminatory practices that are “for or in connection with” communication services. Specifically, Section 201(b) provides that “[a]ll charges, practices, classifications, and regulations for and in connection with such [interstate communication by wire or radio] communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful.” Similarly, Section 202(a) provides that “[i]t shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.”

Sections 201 and 202 clearly cover DA services, which are undoubtedly provided “for or in connection with” communication services. Moreover, the Commission’s previous rulings under Sections 201 and 202 relating to the ability of paging carriers to have nondiscriminatory access to telephone numbers has set precedent for increasing the rights of competitors to access needed information under the Act. In that decision, the Commission addressed the fact that only providers of telephone exchange and telephone toll services, which do not include paging carriers, are permitted nondiscriminatory access to telephone numbers under Section 251(b)(3) of the Act—the same provision that limits DA database access to only providers of telephone

exchange and telephone toll service.³⁴ The Commission determined that paging carriers would be disadvantaged by their inability to access telephone numbers on the same nondiscriminatory terms as other carriers and that this discrimination was inconsistent with Sections 201 and 202 of the Act.³⁵ To prevent this discrimination, the Commission found that paging carriers are legally entitled to nondiscriminatory access to telephone numbers under Sections 201 and 202.³⁶ The Commission should reach a similar determination on this parallel issue of the need of third-party providers to access DA listings.

It is clear that unjust and unreasonable discrimination will occur in the DA market unless the Commission allows third-party DA providers to access directory assistance databases. The discrimination is plain: third-party DA providers will be denied access to DA listings that are easily accessed by providers of telephone exchange and toll services. It is also clear that this discrimination is unjust and unreasonable under Sections 201 and 202. DA providers simply cannot compete if they are denied equal access to the DA listings of LECs. In particular, third-party DA providers must have the same type of access to DA on nondiscriminatory prices, terms and conditions (such as format availability and permissible uses) as carriers accessing DA under Section 251(b)(3). Any access that is less than what other carriers have would undercut the ability of third-party providers to compete in the DA market. It is unjust and unreasonable to exclude these providers from access to the information that they need to provide their services.

There has been significant competition and innovation in the directory assistance market, including third-party DA providers attempting to meet the changing and increasing demand for directory assistance services, particularly those enhanced with consumer-friendly features. As the Commission has noted, many of these providers are offering directory assistance services,

³⁴ *Second Report and Order* ¶¶ 322-333.

³⁵ *Id.* ¶ 333.

e.g. national directory assistance, that were not being provided when the 1996 Act was enacted.³⁷ Moreover, it is becoming more apparent that the companies that are in the best position to offer DA services or even develop innovations to those services are not LECs, but rather third-party providers of DA. As the Commission has noted, many IXC, CLECs, and independent LECs may not have the resources or economies of scale to operate their own DA platform and many may want to take advantage of additional DA features that they cannot provide for themselves.³⁸ As the Commission has also noted, individual business and residential customers “may want to avail themselves of services that might not be available through their LECs,” but rather are only available through third-party providers.³⁹ Even some incumbent LECs are now relying on third-party DA providers to offer enhanced DA services, such as national directory assistance. Thus, if incumbent LECs, with their dominant positions and vast resources, have found it more efficient and cost-effective to outsource their DA services to third-party providers, then most certainly the availability of third-party services would benefit start-up CLECs, IXCs, and other independent LECs that do not have similar resources and economies of scale. Otherwise stated, if the market dynamics compel a LEC to choose a third-party provider as the most cost-effective and efficient way to provide quality DA services, then there must be a related market need for third-party providers to have the ability to access the listings to provide those services.

In order to ensure that these third-party providers can continue to offer cost-effective and quality DA services, it is essential that the Commission allow them to access the DA listings in the LECs databases. These listings are the most accurate listings available and are crucial to providers’ ability to offer quality DA services.

³⁶ *Id.*

³⁷ *NPRM* ¶ 193.

³⁸ *NPRM* ¶ 182.

³⁹ *NPRM* ¶¶ 182-183.

B. The Commission Should Consider As An Alternative the Option of Allowing Nondiscriminatory DA Access to Third-Party Providers That Are Agents of Carriers Eligible to Receive Listings Under Section 251(b)(3).

The Commission has asked for comment on whether it should permit third-party DA providers that are agents of LECs to access DA listing information and if so, whether these agents should be limited to providing DA only to the customers of the LEC with which it has an agency relationship.⁴⁰ In posing this question, the Commission notes that there are instances where a non-carrier directory assistance provider may “be under an agency relationship with a carrier principal,” and that allowing this agent to access DA may be necessary to comply with Section 217 of the Act, which states that:

[i]n construing and enforcing the provision of this Act; the act . . . of any officer, agent, or other person acting for or employed by any common carrier or user acting within the scope of his employment, shall in every case be also deemed to be the act . . . of such carrier or users as well as that of the person.”⁴¹

LSSi recognizes that the Commission may want to take a less aggressive intermediary step that increases access to DA databases without providing third-party providers with the direct right to access DA databases. LSSi believes a viable alternative, as the Commission has proposed,⁴² is to allow DA access by third-party DA providers that do not provide telephone services but who are in an agency relationship with carrier entitled to access under 251(b)(3). However, LSSi cautions the Commission that limiting access to only agents of carriers is not ideal. This limitation makes third-party DA providers even more dependent upon LECs and further subject to the LECs’ conditions for access to DA listings. Consequently, if the Commission determines to implement this alternative access route, the Commission should at least mitigate the anticompetitive impact of this dependency by determining that third-party DA

⁴⁰ *NPRM* ¶ 184

⁴¹ *NPRM* ¶ 185.

⁴² *NPRM* ¶ 184.

providers may provide services to any customer of their choosing and not just the customers of the LEC with which they are associated. Moreover, allowing these third-party DA agents to provide their services to any customer will further increase competition among third-party DA providers.

III. THERE IS NO COMPETITIVE NEED TO REQUIRE LECS TO PROVIDE ACCESS TO DA LISTINGS THAT ARE ACQUIRED FROM THIRD-PARTY PROVIDERS OR OTHER LECS.

The advent of national directory assistance (NDA”) services has introduced the question of whether LECs are obligated to provide the listings that are the “nonlocal” portion of their NDA services *e.g.* the listings that are not from their own customers in their service areas. LSSI believes that lack of access to these listings will not unduly disadvantage DA providers’ ability to offer quality DA services, and thus neither the Act or the Commission’s nondiscriminatory requirements necessitate requiring access to these listings.

The provision of NDA services has been the natural outgrowth of allowing competitors access to the local directory assistance listings of incumbent LECs. Providers have accessed the regional listings from each incumbent LEC, combined those listings, and then provided the combined listings as NDA services. In some instances, these competitive providers of NDA services are selling those services back to the incumbent LECs who only have the listings from their own region. A recently publicized example is US West’s directory assistance service. In that arrangement, a third-party provider of directory assistance purchases listings from US West and other LECs, packages those listings together and then provides the listings for US West’s NDA service.

In the advent of NDA services, the Commission has sought to ensure that these services remain competitive. As a part of this effort, the Commission has asked in its *NPRM* whether or

not it should determine that all LECs providing NDA have an obligation under Section 251(b)(3) to provide nondiscriminatory access to those listings, regardless of whether some of those listings are from third-party providers or other telephony providers and not from the LEC itself.⁴³ The Commission further asked commenters whether a requirement to make available all listings, including nonlocal listings, “is needed to promote the development of a competitively neutral directory assistance market.”⁴⁴

LSSi believes that the fundamental question goes beyond whether incumbent LECs should have to provide access to “nonlocal” listings. Indeed, given the current direction of the industry, “nonlocal” and “local” are imprecise terms. The critical question is whether or not LECs should have to provide DA information that they have acquired from sources *other than* from their carriers-to-customer relationships. LSSi believes that LECs should not have to provide access to these listings.⁴⁵

First, such access is not necessary to meet the pro-competitive goals of the 1996 Act or the Commission’s nondiscriminatory requirements. Section 251(b)(3) requires that local exchange carriers must provide competing providers of telephone exchange or toll service with nondiscriminatory access to “directory assistance” and “directory listing.” The intention of this provision is intended to ensure that competitors are not disadvantaged in their provision of telecommunications services because they are unable to also provide their customers with DA services that are comparable to those of the competing LEC. This is because carriers that are providing telecommunications services to a particular customer are generally the only providers that have the directory listing information associated with that customer by virtue of a privileged

⁴³ *NPRM* ¶¶ 193-195.

⁴⁴ *NPRM* ¶ 193.

⁴⁵ Carrier-to-customer relationship is established when a carrier contracts with a particular end-user to provide telecommunication services directly to that end-user.

customer-to-carrier relationship. Moreover, because incumbent LECs are the monopoly local exchange providers, their control over each customers' directory listing information, taken in aggregate, gives the incumbent LECs a bottleneck control over the DA market.

However, as the Commission has already recognized, LECs do not exercise bottleneck control over listings that they purchase from third-party DA providers or other carriers and do not acquire as a result of this carrier-to-customer relationship. Competing DA providers can thus access these listings from the same sources as the LECs. In its *US West NDA Order*, the Commission stated that "US West does not exercise monopoly power over the components used to provide telephone numbers of customers *outside* its region."⁴⁶ Instead, US West relies on other sources to access listings outside of its region, just like any other provider.⁴⁷ "[W]e find no reason to require US West to provide these [nonlocal] numbers to unaffiliated providers of nonlocal directory assistance service."⁴⁸ Indeed, the emergence of the NDA market after the 1996 requirements to make listings available, demonstrates that competitors have the tools necessary to develop this offering.

Second, requiring LECs to provide access to list information that is not from their own customers could undermine the quality of DA information available. If every LEC were required to make available all of its listings, regardless of whether those listings were the result of a customer-to-carrier relationship, there would be no guarantee of the accuracy or quality of those listings, as many of the LECs would be providing second-hand information that they had no way of guaranteeing was still accurate. Moreover, if the evolution of competition in the long-distance market is any indicator, as local telephone competition increases, customers are less likely to remain faithful to one particular carrier, and thus their directory information will change much

⁴⁶ *NPRM* ¶ 33.

⁴⁷ *NPRM* ¶ 33.

more rapidly, thus further increasing the need to have the carrier that is actually providing service to the customer to also have the primary obligation to provide that customers listing information to competing DA providers. The carrier of last resort, *i.e.* the provider that is in the carrier-to-customer relationship, is in the best position to keep the DA information accurate, and accordingly, should be the source of directory listings. Finally, requiring LECs to provide access to these listings would devalue the efforts of competitors that have already gone through the effort to compile the listings, allowing providers that have not exerted the effort essentially to obtain a free-ride from NDA providers and offer a competing services with must less effort.

Instead of requiring LECs to provide listings that they have purchased from other sources, the Commission can improve competition in, and quality of, NDA services by ensuring that all LECs provide nondiscriminatory access to the listing information of their own customers, thereby allowing competitive providers to compile that information for themselves in order to offer NDA services. Moreover, the Commission should also make clear that carriers do not have to provide nondiscriminatory access to the enhanced features that accompany their NDA services. DA providers often enhance their DA services by including features such as access to information about the nearest restaurant, movie theatre and recreational facility. These features set DA providers apart from their competitors and are the result of creativity and business effort, not monopoly control over telecommunication customers and services. These features are neither necessary to allow the provision of DA services, nor are they “adjunct” features.⁴⁹ Thus, there is no statutory or competitive need to require carriers to allow nondiscriminatory access to these enhanced features.

⁴⁸ *US West NDA Order* ¶ 33.

⁴⁹ Under Section 251(b)(3), the obligation to provide directory assistance listings includes any adjunct feature of DA service, such as rating tables or customer information databases that are “necessary to allow competing providers full use of [DA] services. *Second Order on Reconsideration* ¶ 136.

IV. THE COMMISSION SHOULD PERMIT NON-DA USE OF DA LIST INFORMATION AND SUBSCRIBER LIST INFORMATION AND SHOULD NOT ALLOW LECs TO CONTROL THIS USE BY MANIPULATING PRICING AND CONSUMER PRIVACY CONCERNS.

The Commission has asked whether or not entities that obtain DA listing data under Section 251(b)(3) have the right to use those listings for directory publishing and other purposes.⁵⁰ Moreover, if this right exists, the Commission asks whether or not LECs should be able to impose different rates, terms and conditions on DA listings that will also be used for non-DA purposes.⁵¹ Finally, the Commission has asked whether the rates charged for DA database listings should mirror the rates for subscriber list information.⁵²

A. The Commission and Not Individual LECs Should Determine How Providers May Use Directory Assistance and Subscriber List Information and Determine the Privacy Protections to Govern that Use.

To date, use restrictions on DA listings have been a significant problem for DA providers. Specifically, LECs have generally imposed restrictions that limit all other uses of directory listings, including the identification of customers for potential customers to receive marketing information, directory compilation, sales, telemarketing, and numerous other uses. There are several reasons why the Commission should determine that such limitations are discriminatory and anticompetitive.

First, many of the use restrictions imposed by LECs are discriminatory in that LECs are able to use their listing information in the way that they choose, while competitors are limited only to DA services. For example, while LECs limit competitors' ability to use DA listing information for marketing purposes, LECs at the same time use this information for non-DA

⁵⁰ *NPRM* ¶ 186.

⁵¹ *NPRM* ¶ 186.

purposes, such as targeting customers and marketing. This is inconsistent with the Commission's requirement that LECs provide DA to competitors on the same terms, conditions and rates that the LEC provides to itself.

The Commission has determined that the Act's requirement of nondiscriminatory access to DA was not met just "focus[ing] *only* upon 'customer perceptions' of service quality," as this standard "overlooks the potential for a providing LEC to subject its competitors to discriminatory treatment in ways that are not visible to the customer, such as the imposition of disparate conditions between similarly-situated carriers on the pricing and ordering of services."⁵² Just as behind-the-scenes differences in treatment could damage DA providers' ability to offer their customers quality DA services, so too can those differences damage DA providers' ability to offer a full array of services to their customers.

Second, use restrictions are not necessary to protect customer privacy. While consumer privacy is a critical public policy issue, particularly in the Internet age, LECs should not be the arbiters or enforcers of consumer privacy. LECs should not presume that they have an obligation or even a right to set *unilaterally* restrictions on the use of customer information. Unilateral attempts to establish use restrictions based on privacy policy merely disguises the efforts of some LECs to limit the availability of services for competitive advantage. This is transparent when these same LECs use the information in ways that they prohibit to DA providers. These particular LECs are not the only protectors of customer information, and moreover, they are in a no better position to protect the privacy of this information than DA providers. Further, increasingly technological solutions and industry-wide policy commitments will allow DA

⁵² *NPRM* ¶ 188.

⁵³ *Second Report and Order* ¶ 103.

providers to protect customer information by limiting access or by allowing consumers to view information for accuracy.

Third, a complete ban on all non-DA uses of directory listings is not necessary to further the Act's goal of ensuring competition in the DA market. For instance, if the Commission is concerned that entities will access DA listings in an effort to provide a variety of services that do not include DA services, the Commission could determine that DA providers can access DA listings without use restrictions, as long as they also provide DA services. This would further the Act's goal of enhancing the opportunities for additional competition in the DA market, resulting in lower prices and higher quality. In contrast, limiting DA providers' use of listings would be inconsistent with the Act in that it would place competitors at a disadvantage to LECs that can use their listings for a variety of purposes (and increase the economies of scale to cover the costs of the listings) and would undermine the Act's goal of allowing competitors to develop their own creative offerings.

Given the prime opportunity for LECs to take advantage of the dominant control they have over the DA database listings, individual LECs should not unilaterally determine the scope and use of directory listings. Instead, the Commission and the DA industry as a whole (and not just LECs) should set the parameters for how privacy should be protected as DA providers are allowed to access DA listings.

LSSi recognizes that the Commission's ability to provide guidance on privacy of customer information is currently at issue in a pending court proceeding, and thus, the scope of the Commission's authority to set privacy policy may not be clear.⁵⁴ However, at a minimum,

⁵⁴ The 10th Circuit Court of Appeals recently determined that the FCC could not require LECs to obtain the approval of their customers for use of their customer proprietary network information ("CPNI") through an opt-in process. Several carriers have filed for reconsideration of this decision. CPNI does not include DA and subscriber lists.

the Commission should determine that until the matter has been settled in the appeals process, LECs cannot unilaterally impose use restrictions on DA providers accessing listings.

B. The Commission Should Not Allow LECs to Price DA List Information and Subscriber List Information Based Upon Use.

The Commission has asked for comment on whether or not it should allow LECs to vary the price of subscriber list information or directory assistance listings based upon how DA providers plan to use that information. In addition, the Commission has also asked whether or not DA list information and subscriber list information should be priced equally.

Pricing DA listings based upon intended use is inappropriate and anticompetitive for several reasons. By allowing LECs to price DA listings based upon how DA providers will use those listings, the Commission would in effect allow LECs to be gatekeepers and control the type of offerings that would be available, the pace of development, and market demand. Indeed, the effect would be to allow LECs to create an artificial distinction among uses as justification to manipulate prices of directory information to the detriment of competitors. Specifically, use-based pricing provides LECs with an incentive to impose unreasonable prices on the most innovative services that would ordinarily generate significant revenue streams for DA providers. For example, as the Commission noted, “additional applications should make Internet databases containing subscriber list information a major source of advertising revenue.”⁵⁵ Thus, allowing the LECs to price DA listings based on use would, in effect, subject competitors to a LEC tax on ingenuity and creativity. LECs would have the power to decide what services should be offered based on the manner in which they price access to the information needed to offer those services. Indeed, LECs could charge prices that are so high for particular uses that DA competitors may no longer find it cost-effective to provide those services. Finally, use-based pricing inefficiently

and uneconomically diminishes the relationship between the cost (including a reasonable profit) of providing listings and the price of those listings, which is inconsistent with the Act's spirit of cost-based pricing.

Instead of use-based pricing, the Commission should price DA listings based on cost, including a reasonable allocation of common costs and overheads, as well as a reasonable profit. Moreover, the Commission should not set rates for DA listings that mirror subscriber list information. The rates for DA list information and subscriber list information should be set independently, recognizing that there may be different costs in generating the information and may result in rates that are lower than the presumptive rates the Commission has already identified for subscriber list information.⁵⁶

V. THE COMMISSION SHOULD DETERMINE THAT DIRECTORY INFORMATION PROVIDERS CAN USE EITHER DA LIST INFORMATION OR SUBSCRIBER LIST INFORMATION TO PROVIDE INTERNET DIRECTORY SERVICES.

The Commission has asked whether or not providers accessing subscriber list information should be able to use that list information to offer services over the Internet or for oral publications.⁵⁷ The Commission has asked this question recognizing that Section 222(e) gives a broad definition of the publication types for which this information can be used, *i.e.* for directories in *any format*, and also recognizing that a natural use of this information is Internet offerings. “The recent explosion in Internet usage has spawned a number of innovative applications that rely on subscriber list information.”⁵⁸ In addition, the Commission has made this inquiry in view of the fact that state commissions have begun to address this issue. For instance, the Florida Public Service Commission ruled narrowly on the use of subscriber list

⁵⁵ *NPRM* ¶ 173.

⁵⁶ *NPRM* ¶¶ 92-93.

⁵⁷ *NPRM* ¶¶ 173, 180.

information for Internet offerings and determined that Internet directory providers could not use subscriber list information to offer Internet services, but rather had to purchase listing information out of BellSouth's directory assistance tariff at the rates, terms and conditions imposed in that tariff.⁵⁸ Accordingly, it is necessary for the Commission to establish a national policy framework on the use of directory information for Internet offerings in order to ensure consistent pro-competitive policies among states.

The Commission correctly concluded that it cannot typecast Internet Directories as directory assistance or directory publishing. Instead, the Commission should determine that providers can make their own independent judgements as to which type of directory information—subscriber list information or DA list information—best suits their Internet directory offerings and business strategies, and then pay the cost associated with that particular category of directory information services.

First, as the FCC has recognized, distinguishing between directory assistance and directory publishing would be inconsistent with the market reality that Internet directories have the characteristics of both traditional directory assistance and traditional directory publishing. For example, a web-surfer may peruse an online directory much in the same way as a white or yellow page directory. The online directory user may flip-through the directory by clicking from one web page to the next. However, that same online directory may allow the user to key in a name or address in order to request a telephone number in the same way that the user could dial 411 for a directory assistance operator (live or automated) to provide the same information. As another example, directory offerings may allow customers to access the web on their mobile

⁵⁸ *NPRM* ¶ 172.

⁵⁹ Florida Public Service Commission, *In Re: Petition and Complaint of Florida Independent Directory Publishers to Amend Directory Publishers Database Service Tariff of BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company*, Order No. PSC-97-0535-FOF-TL (Issued May 9, 1997).

phones and to retrieve directory information by surfing the web, rather than by interfacing with a live or automatic operator.

Moreover, these Internet offerings, because of the presentation and interactive options that the medium affords, now package directory services with additional information that is well-beyond the traditional notions of directory assistance and directory publishing. For example, as the Commission has noted, some directory information providers not only provide the addresses of businesses, but also indicate the brands carried, operating hours and a personalized street map of the surrounding area.⁶⁰ Similarly, some services may provide a hotel's location information along with space availability and an interface to make reservations directly. Thus, one online directory can provide the functionality of both directory publishing and directory assistance, and it would be a meaningless distinction to try to cast such an online directory exclusively into one of these categories.

Second, given the vastness of the Internet, it would be administratively impossible to even track such online directories, much less categorize them. Accordingly, from a practical perspective, it makes sense to allow providers to use either DA listings or subscriber list information to provide Internet directories.

Third, the clear language of the Act permits the use of subscriber list information for Internet Directories. In Section 222(e), the Act permits directory publishers to use subscriber list information to provide directories "*in any format.*" "Any format" is an expansive phrase that contemplates more than just paper directories, but instead can include a variety of formats including HTML, XML, WAP⁶¹ and other Internet protocols. To exclude Internet protocols

⁶⁰ *NPRM* ¶ 172.

⁶¹ HTML, XML and WAP are hypertext markup language, extensible markup language and wireless application protocol respectively. HTML has long been a common protocol for web page design. Now, some

from “any format” would be inconsistent with the plain meaning in the clear words of the statute and also inconsistent with the Act’s goal to advance new technologies and not any specific technology.

Moreover, the Act provides the Commission with authority to permit the use of database listings, as well as subscriber list information to provide Internet directories. Numerous provisions in the Act are testimony to the fact that Congress intended for the Act to advance new and innovative services. As the Commission has well-stated, the “Act is technologically neutral and is designed to ensure competition in all telecommunications markets.”⁶² The Commission’s role “is not to pick winners or losers, or select the ‘best’ technology to meet consumer demand, but rather to ensure that the marketplace is conducive to investment, innovation, and meeting the needs of consumers.”⁶³ The nature of directory assistance services is changing and the Internet could become the primary medium for relaying directory information. Thus, it does not make sense for the Commission to determine that DA list information should only be used for traditional directory assistance services, and that subscriber list information should only be used for traditional directory publications. Moreover, this artificial distinction would not be consistent with the Act’s purpose of allowing competitors access to the essential inputs needed to provide their service. Instead, the Commission should allow providers to choose which type of list information is more beneficial to their services offerings.

companies have identified XML and WAP as particularly suited to allowing consumers to access the Internet on handheld devices.

CONCLUSION

LSSi believes that the Commission has a significant opportunity to ensure that competition will continue and flourish in the directory assistance and publishing markets. In order for this to occur, the Commission must insure that all directory assistance providers and directory publishers have access to the information that they need to offer their services on nondiscriminatory prices, terms and conditions. Accordingly, LSSi urges the Commission to reach the following conclusions:

First, the Commission should clarify that call completion services constitute either telephone exchange or telephone access services, and that any DA provider that offers these services has a right of access to DA list information under 251(b)(3).

Second, the Commission should exercise its authority under Sections 201 and 202 to extend access to DA list information to DA providers that are not otherwise eligible under Section 251(b)(3) of the Act.

Third, the Commission should determine that the nondiscriminatory requirements of Section 251(b)(3) do not require carriers to provide access to listing information that they have not acquired in the course of their customer-carrier relationships, but instead have purchased from third-parties or other telecommunications carriers.

⁶² *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability et al.*, Memorandum Opinion and Order, CC Docket Nos. 98-147, 98-11, 98-26, 98-32, 98-15, 98-78, 98-91, FCC 98-188 (rel. Aug. 7, 1998) ¶ 11.

⁶³ *Id.* ¶ 2.

Fourth, the Commission should allow DA providers to use DA list and subscriber list information for non-DA purposes and should not allow carriers to control this use by manipulating pricing or consumer privacy concerns. Moreover, the Commission and not individual LECs should set privacy policy for the use of DA list and subscriber list information.

Fifth, the Commission should determine that directory information providers can use either DA list information or subscriber listing Information to provide Internet directory services.

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Dated: October 13, 1999

CERTIFICATE OF SERVICE

I, Stanley M. Bryant, do hereby certify that on this 13th day of October, 1999, I have served a copy of the foregoing document via messenger, to the following:

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